



Reprinted
February 16, 2005

SENATE BILL No. 446

DIGEST OF SB 446 (Updated February 15, 2005 3:02 pm - DI 103)

Citations Affected: IC 8-1.5; IC 13-26; IC 36-9; IC 36-11.

Synopsis: Liens for storm water fees. Provides that storm water management district fees constitute liens. Sets forth the procedures by which: (1) a lien attaches and is enforced; and (2) payment of fees is enforced. Conforms the lien procedure for regional sewer districts with the lien procedure for municipal sewers.

Effective: July 1, 2005.

Gard, Lanane

January 13, 2005, read first time and referred to Committee on Judiciary.
February 10, 2005, amended, reported favorably — Do Pass.
February 15, 2005, read second time, amended, ordered engrossed.

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SB 446—LS 7745/DI 103+



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February 16, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 446

A BILL FOR AN ACT to amend the Indiana Code concerning
utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1.5-5-29 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a**
4 **city that before January 1, 2005, adopted an ordinance establishing**
5 **procedures for the collection of unpaid user fees under this chapter**
6 **through the enforcement of a lien.**
7 (b) Fees assessed against real property under this chapter
8 constitute a lien against the property assessed. The lien is superior
9 to all other liens except tax liens. Except as provided in subsections
10 (c) and (d), the lien attaches when notice of the lien is filed in the
11 county recorder's office under section 30 of this chapter.
12 (c) A fee is not enforceable as a lien against a subsequent owner
13 of property unless the lien for the fee was recorded with the county
14 recorder before the conveyance to the subsequent owner. If
15 property is conveyed before a lien is filed, the department shall
16 notify the person who owned the property at the time the fee
17 became payable. The notice must inform the person that payment,

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including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(d) A lien attaches against real property occupied by someone other than the owner only if the department notifies the owner within twenty (20) days after the time the user fees became sixty (60) days delinquent. However, the department must give notice to the owner only if the owner has given the department written notice of the address to which to send notice.

(e) The department shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 2. IC 8-1.5-5-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. (a) The board may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:

(A) The name of the owner of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in

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1 accordance with the fee schedule established in IC 36-2-7-10. The
 2 officer shall mail by certified mail, or by another delivery service
 3 providing proof of delivery, to each property owner on the list or
 4 on an individual instrument a notice stating that a lien against the
 5 owner's property has been recorded. A service charge of five
 6 dollars (\$5), which is in addition to the recording fee charged
 7 under this subsection and under subsection (e), shall be added to
 8 each delinquent fee that is recorded.

9 (d) Using the lists and instruments prepared under subsection
 10 (b) and recorded under subsection (c), the board shall, not later
 11 than ten (10) days after the list or each individual instrument is
 12 recorded under subsection (c), certify to the county auditor a list
 13 of the liens that remain unpaid for collection in the next May. The
 14 county and its officers and employees are not liable for any
 15 material error in the information on this list.

16 (e) The board shall release any recorded lien when the
 17 delinquent fees, penalties, service charges, and recording fees have
 18 been fully paid. The county recorder shall charge a fee for
 19 releasing the lien in accordance with IC 36-2-7-10.

20 (f) Upon receipt of the list under subsection (c), the county
 21 auditor of each county shall add a fifteen dollar (\$15) certification
 22 fee for each lot or parcel of real property on which fees are
 23 delinquent. The fee is in addition to all other fees and charges. The
 24 county auditor shall immediately enter on the tax duplicate for the
 25 district the delinquent fees, penalties, service charges, recording
 26 fees, and certification fees, which are due not later than the due
 27 date of the next May installment of property taxes. The county
 28 treasurer shall include any unpaid charges for the delinquent fee,
 29 penalty, service charge, recording fee, and certification fee to the
 30 owner or owners of each lot or parcel of property, at the time the
 31 next cycle's property tax installment is billed.

32 (g) After certification of liens under subsection (d), the board
 33 may not collect or accept delinquent fees, penalties, service
 34 charges, recording fees, or certification fees from property owners
 35 whose property has been certified to the county auditor.

36 (h) If a delinquent fee, penalty, service charge, recording fee,
 37 and certification fee are not paid, they shall be collected by the
 38 county treasurer in the same way that delinquent property taxes
 39 are collected.

40 (i) At the time of each semiannual tax settlement, the county
 41 treasurer shall certify to the county auditor all fees, charges, and
 42 penalties that have been collected. The county auditor shall deduct

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the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 29(d) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars (\$40).

SECTION 3. IC 8-1.5-5-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 31. (a) A district may foreclose a lien established by this chapter in order to collect fees and penalties. The district shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisal laws.**

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

SECTION 4. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works of the district in the manner established under IC 36-9-23. The liens:**

- (1) attach;**
- (2) are recorded;**
- (3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and**
- (4) shall be collected and enforced;**

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

SECTION 5. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.**

(b) A fee is not enforceable as a lien against a subsequent owner of

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property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not ~~less~~ **more** than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which his notice is to be sent.

(d) The municipality shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 6. IC 36-11-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A district may enforce delinquent fees and penalties in the manner described in ~~IC 13-26-13~~. **IC 36-9-23.**

SECTION 7. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 13-26-12; IC 13-26-13.

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SENATE MOTION

Madam President: I move that Senator Lanane be added as second author of Senate Bill 446.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 446, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "can be" and insert "is".

Page 2, line 41, after "mail" insert "**by certified mail, or by another delivery service providing proof of delivery,**".

Page 4, after line 17, begin a new paragraph and insert:

"SECTION 4. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works of the district in the manner established under IC 36-9-23. The liens:**

(1) attach;

(2) are recorded;

(3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and

(4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

SECTION 5. IC 36-11-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A district may enforce delinquent fees and penalties in the manner described in ~~IC 13-26-13~~. **IC 36-9-23.**

SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 13-26-12; IC 13-26-13."

and when so amended that said bill do pass.

(Reference is to SB 446 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 446 be amended to read as follows:

Page 1, line 15, delete "less" and insert "**more**".

Page 4, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 5. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not ~~less~~ **more** than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which his notice is to be sent.

(d) The municipality shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees."

Renumber all SECTIONS consecutively.

(Reference is to SB 446 as printed February 11, 2005.)

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SENATE MOTION

Madam President: I move that Senate Bill 446 be amended to read as follows:

Page 1, delete lines 1 through 8, begin a new paragraph and insert:
 "SECTION 1. IC 8-1.5-5-29 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a city that before January 1, 2005, adopted an ordinance establishing procedures for the collection of unpaid user fees under this chapter through the enforcement of a lien.**

(b) Fees assessed against real property under this chapter constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (c) and (d), the lien attaches when notice of the lien is filed in the county recorder's office under section 30 of this chapter."

Page 1, line 9, delete "(b)" and insert "(c)".

Page 2, line 2, delete "(c)" and insert "(d)".

Page 2, line 8, delete "(d)" and insert "(e)".

(Reference is to SB 446 as printed February 11, 2005.)

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